

HON' BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION No.18618 of 2007

ORDER:

This writ petition is filed to declare the action of the respondent in trying to evict the petitioner from her land admeasuring Ac.6.55 cents in Sy.Nos.179/ 1, 180/ 1 and 15/ 1 of Elakolanu Village, Rangampeta Mandal, East Godavari District, without issuing any show cause notice and without passing any order in that regard, as illegal and arbitrary.

2. The case of the petitioner, in brief, is as follows:

According to the writ-affidavit of the petitioner, she is the owner of the subject land, having purchased the same under a registered document dated 25.10.2004, sale agreement cum general power of attorney for valuable consideration from Smt. N.Sridevi and ever since, she has been in possession and enjoyment of the same; she raised chashewnut plantation in the said land; prior to it, her vendor and her vendor's vendor were the absolute owners of the land and it is zeroithi in nature; the Mandal Revenue Officer has also issued pattadar pass book and title deed in favour of her vendor and the predecessor of her vendor Sri V.Satyanarayana Murthy was shown as pattadar in the revenue records; the Mandal Revenue Officer also issued a certificate to the effect that her vendor was the absolute owner of the land; on 29.08.2007, the respondent came to the subject property along with his staff and tried to dispossess the petitioner highhandedly without serving any notice whatsoever. Hence, the writ petition.

3. A counter-affidavit has been filed by the respondent-Tahsildar, Rangampeta Mandal stating that in the year 1983, the then Tahsildar, Peddapuram Mandal assigned patta to Sri Vadrevu Satayanrayana Murthy

of Elakolanu village for an extent of Ac.0.92 cents in S.No.179/ 1, which is classified as 'Government waste land' and an extent of Ac.4.90 cents in S.No.180/ 1, which is classified as 'kadumula cheruvu poramboke'; subsequently, the pattadar sold away those lands on 03.09.2007 to Smt.N.Sidevi, who in turn sold the same to one Addanki Pama Karuna W/o Srinivasa Rao, the writ petitioner; the nature of the land is heritable and not alienable, therefore, neither the seller nor the purchaser can transact over the land unauthorisedly and the transaction is unlawful; that as the transaction was in violation of the Act 9/ 1977 read with amended Prohibition of Transfer Act 8/ 07, the action was already taken under the Act by following the stipulated procedure; in pursuance of the same, the possession of the land was taken by the Government on 03.09.2007 under panchanama. It is also stated in the counter-affidavit that the petitioner is a non-residence and therefore, substitute service has been done as her address particulars were not traceable.

4. The writ petition came up for admission on 31.08.2007 and this Court ordered *status quo* as on that date.

5. Heard the learned counsel for the petitioner and the learned Assistant Government Pleader for Revenue (AP). Perused the record.

6. Learned counsel for the petitioner would contend that the respondent has not issued any notice whatsoever to the petitioner prior to the resumption of the land and the Tahsildar has no power to cancel D.Form patta for breach of conditions without issuing any show cause notice. He relied upon a judgment of this Court in '*Madaka Savitri vs. District Collector, Krishna District & others*'¹ and contends that issuance

¹ 2011(1) ALT 662

of show cause notice is basic requirement under Rule 3 of the A.P. Assigned Lands (POT) Rules 2007 and the resumption of the said land without issuing any notice is bad in law.

7. Learned Assistant Government Pleader for Revenue contends that as the petitioner is a non-resident of the village, substituted service was done.

8. Even though a specific stand has been taken in the affidavit filed along with the writ petition that no notice has been served on her, in the counter-affidavit, except stating that 'the petitioner is a non-resident and substituted service has been done', no other particulars are given by the respondent, as to how and when the substituted service has been done. As per the A.P. Assigned Lands (POT) Rules 2007, before taking resumption of the assigned land, show cause notice shall be issued to the assignee. Admittedly, in the case on hand, no notice has been served on the writ petitioner before resumption of land by the respondent. Hence, the resumption order dated 13.07.2007 is liable to be set aside and is accordingly, set aside. However, the respondent is given liberty to take action for resumption of land, in accordance with law, after serving a notice on the petitioner. The petitioner is directed to furnish his address with due acknowledgment, in the office of the Tahsildar, Rangampeta Mandal, East Godavari District, to enable the Tahsildar to serve the notice if need be, within two weeks from the date of receipt of a copy of this order. If the petitioner does not give his address in the office of the Tahsildar, Rangampeta Mandal, for service of notice on him, the Tahsildar shall cause the notice served by way of substituted service, if he is not available in the village, and pass orders in accordance with law, if need be.

9. The writ petition is, accordingly, allowed. No order as to costs.
Miscellaneous petitions, if any, pending in this writ petition, shall stand closed.

Date: 11.07.2018
BSS

KONGARA VIJAYA LAKSHMI, J



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